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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

February 7, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of International Settlement Rates
IB Docket No. 96-261

Dear Secretary Caton:

Enclosed are an original and four copies of France Telecom's Comments pursuant to the Notice of Proposed Rulemaking, released December 19, 1996 in the above-captioned proceeding. Copies of our Comments were hand-delivered today in accordance with the attached service list.

Sincerely yours,

T Krauss

Theodore W. Krauss
France Telecom, Inc.
Vice President
Legal and Regulatory Affairs

Enclosures

cc: Kathryn O'Brien, International Bureau, Room 822
ITS, Inc.

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OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Settlement Rates	)	IB Docket No. 96-261

COMMENTS OF FRANCE TELECOM

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February 7, 1997

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SUMMARY

France Telecom (FT) is uniquely well-positioned to provide a balanced perspective on the accounting rate issues raised in the NPRM. FT is sensitive to the interests of US operators in this proceeding (it owns 10% of Sprint), and, unlike many major US carriers, FT is highly attuned to the needs and practices of developing country carriers due to its long-held investments in Africa, Central and South America and elsewhere. Furthermore, FT notes that its settlement rate with the US (13.7 cents per minute effective January 1, 1997) is within the Commission's proposed benchmark range for "high income" countries, such as France. Thus FT's comments here are principally offered in light of its more global perspective on the impact of the proposals in the NPRM.

FT agrees, today, with the need for accounting rate reform. However, the unilateral nature of the NPRM's proposals is counterproductive. A unilateral track may forestall other more viable reform efforts in international fora. Instead, FT hopes that the Commission will support the reform initiative underway at the International Telecommunication Union (ITU) which has recently gained new momentum.

While FT disagrees with the NPRM's proposals, FT suggests that the NPRM, and the Comments provided to the Commission in this proceeding, might serve as useful reference documents to further debate and action on accounting rate reform in a multilateral forum such as the ITU. FT presently believes that there is a need for a multilaterally accepted framework for calculating costs to assist carriers to establish, through their bilateral negotiations, cost-based accounting rates. Until a multilateral framework is adopted, individual carriers may wish to incorporate, on a consensual and bilateral basis, elements of the NPRM's methodology in their bilateral accounting rate negotiations.

In addition to the foregoing, FT also provides certain remarks in these Comments on the proposed methodology for calculating costs, and on other issues of concern to carriers from developing and other countries.

Finally, FT agrees that it is an open question whether the NPRM's proposed enforcement and market entry "safeguards" would be consistent with the United States' MFN obligations in

the event the WTO's Group on Basic Telecommunications reaches an agreement on liberalizing trade in basic telecommunications service. At this point in time FT believes that it would be counterproductive to second guess how this issue would ultimately be decided in the event of an actual challenge to such provisions. However, FT respectfully requests that, if the NPRM proposals are adopted, the Commission express its support for the GATS and make clear that any dispute challenging MFN compatibility of the NPRM proposals should be submitted to the exclusive jurisdiction of the dispute resolution body established by the WTO.

As a related matter, FT hereby reiterates that it is encouraged by the prospect of worldwide competition and reaffirms its desire for a global and balanced agreement on basic telecommunications services to be reached on February 15. For, ultimately, it is through broadbased global competition - not benchmarking by Commission fiat - that accounting rates will be lowered.

For the reasons set forth in these Comments, FT respectfully requests that the Commission abstain from adopting the proposals in the NPRM.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
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	)	

COMMENTS OF FRANCE TELECOM

Pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM")[1] released December 19, 1996 in the current docket, France Telecom ("FT") hereby respectfully submits its comments.

INTRODUCTION

France Telecom is the world's fourth largest telecommunications company,[2] with significant investments in the United States[3] and in many developing countries, and is a partner in the three-way FT / Sprint / Deutsche Telekom global telecommunications alliance named Global One. Thus, FT is uniquely well-positioned to provide a balanced perspective on the accounting rate issues raised in the NPRM. First, of course, it is the principal French carrier, with substantial traffic flows on major routes, including to the United States. Second, given its sizable investment

[1] See International Settlement Rates, IB Docket No. 96-261, Notice of Proposed Rulemaking (released December 19, 1996) ("NPRM").

[2] With 1995 consolidated revenues of $29.6 billion, net income of $1.8 billion and over 32 million telephone lines in service, France Telecom is the world's fourth-largest telecommunications carrier. In addition to local and long-distance telephony, France Telecom provides businesses and consumers with data, wireless, on-line, Internet, cable-TV and value-added services. Through its subsidiary TDF, France Telecom is also a leading European television and radio broadcaster.

[3] FT owns 10% of Sprint.

in Sprint, FT is sensitive to the interests of US operators in this proceeding. Third, unlike many major US carriers, FT is highly attuned to the needs and practices of developing country carriers due to its long-held investments in Africa, Central and South America and elsewhere. FT therefore welcomes the opportunity to contribute its comments in this proceeding.

Liberalization developments in Europe, the US and elsewhere have brought pressure to reform the existing accounting rate[4] system. FT agrees that meaningful thought and action is required in this area. While FT disagrees with the NPRM's proposals, FT suggests that the NPRM, and the Comments provided to the Commission, might serve as useful reference documents to further debate and action on accounting rate reform in a multilateral forum such as the International Telecommunication Union ("ITU").

In summary, following an assessment and analysis of the current system, the NPRM proposes to transform the current system of bilaterally negotiated accounting rates, with a new "benchmark" system. This new benchmark system would involve the establishment by the Commission of a targeted range of accounting rates on each route between the United States and another country. Each such accounting rate range would be defined by an upper benchmark and a lower benchmark accounting rate deemed acceptable by the Commission. The upper benchmark would be calculated using "Tariffed Components Prices" consisting of information

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[4] "An accounting rate is a negotiated rate between international carriers premised on the idea that the carriers jointly provide IMTS [international message telephone service] by handing off traffic to each other at the half-way point between two countries." Regulation of International Accounting Rates, CC Docket No. 90-337 (Phase II), Fourth Report and Order, at ¶15 (rel. Dec. 3, 1996) ("Flexibility Order"). An accounting rate is the price for handling one minute of international telephone service whereby "[e]ach carrier's portion of the accounting rate is referred to as the settlement rate. In almost all cases, the settlement rate is equal to one-half of the negotiated accounting rate. At settlement, each carrier nets the minutes of service it originated against the minutes the other carrier originated. The carrier that originated more minutes of service pays the other carrier a net settlement payment calculated by multiplying the settlement rate by the number of imbalanced traffic minutes." NPRM at ¶ 6; see also International Telecommunication Union, Telecommunication Standardization Sector, ITU Recommendation D.140, "Accounting Rate Principles for International Telephone Services," (Geneva 1992, revised 1995) ("ITU Rec. D.140") (calling for cost-oriented, nondiscriminatory and transparent accounting rates; recognizing that under ITU regulations accounting rates are to be reached by mutual agreement between Administrations).

derived from publicly available data regarding tariffs. The lower benchmark would, in turn, be based on assumptions and, where available, data regarding incremental costs. The NPRM also proposes to institute enforcement mechanisms consisting of maximum implementation periods, determined by the Commission, in which accounting rates would have to brought within the prescribed benchmarks. Furthermore, the Commission proposes to adopt coercive measures to enforce compliance with its benchmarks. Market entry by foreign carriers into the US would also be conditioned on benchmark compliance. The overall approach is designed to force accounting rates paid by US carriers towards costs.

As a general matter, FT is in favor of cost-oriented accounting rates. FT believes that all operators should take steps to move accounting rates towards costs as and when possible. In fact, FT's own settlement rate[5] for US-France traffic has dropped dramatically in the last several years from about 85.5 cents (0.6 SDR) per minute in 1990 to 13.7 cents (0.095 SDR) per minute effective January 1, 1997.[6]

FT presently believes that there is a need for a multilaterally accepted framework for calculating the costs that would underlie a cost-based accounting rate. In this regard, FT notes that it supports the work already underway on this issue in ITU Study Group 3.[7] The work

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[5] For a definition of settlement rate, see footnote 4 supra.

[6] FT notes that this settlement rate is within the Commission's proposed upper range benchmark of 15.4 cents for "high income" countries, such as France. See NPRM at ¶ 47. Thus FT's comments here are principally offered in light of its more global perspective on the impact of the proposals in the NPRM.

[7] The Commission in its NPRM recognized that international organizations such as the International Telecommunication Union ("ITU") and the Organization for Economic Cooperation and Development ("OECD") "have been actively studying accounting rate reform and members of both organizations have reached a consensus on the need for such reform." NPRM at ¶ 15. The NPRM quoted the Secretary-General of the ITU as having stated in a speech in June 1996 that "the situation is not sustainable." Id. (emphasis added). In fact, as recently as November 1996, the World Telecommunications Standardization Conference (WTSC-96) assigned to Study Group 3 of the ITU - Standardization Sector a list of nine questions to be examined during the 1997-2000 period (more formally this group is referred to as the Study Group on "Tariff and Accounting Principles including Related Telecommunications Economic and Policy Issues"). See ITU, Telecommunication Standardization Sector, Study Group 3 - Contribution 1, November 1996 ("Study Group 3 Questions"). Among other issues, the group is focusing on further

undertaken by the Commission in preparing the NPRM is significant and could be used as a reference tool to further action on accounting rate matters at the ITU. In the meantime, individual carriers may wish to incorporate, on a consensual and bilateral basis, elements of the NPRM's methodology in their bilateral accounting rate negotiations.

In addition to the foregoing general remarks, FT provides certain comments below on the following points:

- the unilateral framework of the proposed approach;
- the proposed methodology for calculating costs;
- the proposed deadlines for application of the benchmarks and other issues of concern to carriers from developing and other countries; and
- the question of compatibility of the enforcement measures with the principles of the GATS and the rules of the WTO.

These comments constitute FT's initial reaction to the NPRM. FT is sensitive to the timing of these Comments, which are due shortly before the February 15, 1997 deadline for conclusion of the current WTO negotiations on liberalization of basic telecommunications services. As Commissioner Susan Ness and others have suggested, the NPRM proceeding appears, from the US perspective, to be related to those negotiations.[8] It is to be expected that commenting parties' positions may evolve depending on the outcome of such negotiations[9]. In this regard, FT hereby reiterates that it is encouraged by the prospect of worldwide competition and reaffirms its desire for a global and balanced agreement on basic telecommunications services

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development of Recommendation D.140 and its annexes in order to "- arrive at a more accurate situation of cost components; [and] continue to drive towards cost orientated accounting rates and accelerate the implementation thereof." See Study Group 3 Questions at 4-5 (emphasis added).

[8] See "Global Competition in Telecommunications", Remarks of Commissioner Susan Ness before the Women's Foreign Policy Group, Washington, D.C, January 28, 1997 ("January 28 Speech").

[9] The NPRM proceeding allows for Reply Comments to be filed with the Commission on or before March 10, 1997. NPRM at ¶105.

to be reached on February 15. For, ultimately, it is through broadbased global competition - not benchmarking by Commission fiat - that accounting rates will be lowered.

I. THE UNILATERAL FRAMEWORK OF THE PROPOSED APPROACH IS NOT DESIRABLE

A. Objections to a Unilateral Approach

The Commission's approach aims to establish, on a unilateral basis[10], the rules of the game governing bilateral negotiations between US operators and their counterparts. Regardless of whether one agrees with the legitimacy of the Commission's concern with regards to high accounting rates, such concern does not outweigh the equally legitimate concerns of non-US carriers arising from unilateral establishment of benchmarks and implementation of enforcement mechanisms.

FT cautions the Commission that a unilateral approach will be perceived as insensitive to economic and political realities outside the US. Indeed, the Commission's proposals may forestall[11] or cause a loss of momentum to current reform initiatives in international fora. For example, opponents to reform may characterize the NPRM as a mercantilist initiative designed to enrich US carriers. Such a characterization might be credible for some participants since the

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[10] The Commission has also indicated its support for multilateral work to reform the accounting rate system and proposes to intensify its efforts to achieve a multilateral consensus on reform measures. See id. at ¶17.

[11] The Commission has previously noted AT&T's concern regarding the "risk of changing the fundamental nature of international services from one of cooperation and collaboration into one of delay and confrontation". Regulatory Policies and International Telecommunications, CC Docket 86-494, Order on recon., 4 FCC Rcd 323, 333 (1989) ("1989 Order"). As noted by the Commission in the 1989 Order , AT&T has previously argued for limited involvement by the Commission in accounting rate matters for fear of "possibly bringing the accounting rate process to a standstill and slowing, rather than accelerating, needed changes in the marketplace". Id. at 332.

NPRM does not provide any mechanism to ensure that cost savings by US carriers will be passed on to their customers.[12] This result would be unfortunate because it could taint all reform initiatives as a rich/poor nation issue rather than reform designed to improve the global economy.

In order to justify its unilateral approach, the Commission invokes the increasing imbalance between US-outbound and inbound traffic flows, which the US views as a balance of settlement payments problem.[13] However, it should be noted that the net settlement outpayments situation is not exclusively due to the existing accounting rate regime. This situation is compounded by the marketing, notably by US companies, of services encouraging the reversal of traffic (such as call-back, home-country direct calling card services, etc.).[14] Different traffic

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[12] US consumers pay 99 cents on average per minute of an international call compared to the 36.5 cents average cost to US carriers for the settlement rate paid per minute to foreign operators. NPRM at ¶ 9, ¶ 26. Also, historically, the Commission has concluded that, in order to encourage AT&T to negotiate lower accounting rates, "AT&T should not be required to pass through savings from lower accounting rates as an exogenous factor lowering prices under price caps." Motion of AT&T Corp. to be Declared Non-Dominant for International Service, FCC 96-209, Order, (rel. May 14, 1996) at ¶84 (citing Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873 (1989) ("AT&T Price Cap Order")). Furthermore, the NPRM notes that "[c]urrent prices for international service are *substantially* inflated, *in part* as a result of above-cost accounting rates" thereby implicitly acknowledging that high consumer prices are only partially due to accounting rates. NPRM at ¶ 18 (emphasis added). Recently, Commissioner Ness has called for savings to be passed on to consumers, stating: "I am personally looking to US carriers to share with consumers the benefits of lower rates from a reduction in accounting rates." See January 28 Speech. The NPRM also calls for comments on how to pass savings on to customers. See NPRM at ¶ 91. As a general matter, the basic answer to how consumer prices can be driven down is through increased marketplace competition.

[13] NPRM at ¶ 8, ¶ 18. The Commission estimates that at least three-quarters of its $5 billion in outpayments is a subsidy from US interests to foreign carriers, however; this estimate is faulty for at least one reason: this statistic is based on the assumption that all payments to foreign carriers which exceed such foreign carriers' costs constitute a subsidy, and in the absence of reliable data, the Commission has based its calculation of foreign carriers' costs on AT&T data, which assumption, as mentioned in these Comments, is not appropriate. See NPRM at ¶¶ 50-51 and section II.B. of these Comments. See also footnote 15 infra.

[14] NPRM at ¶ 12. The NPRM notes that recent service innovations such as call-back accentuate market "distortions" caused by above-cost settlement rates. Id. Nonetheless, the Commission has historically encouraged US carriers to provide these types of alternative services. Id. at ¶21; Policy Statement on International Accounting Rate Reform, 11 FCC Rcd 3146 at ¶¶ 21-23 (1996)("Accounting Rate Policy Statement").

routing practices, such as refile, may also contribute to distortions in the balance of settlement payments on particular routes.[15]

Socio-economic factors may also contribute to settlement payments imbalances (US residents may have a greater inclination to use the telephone for social and economic reasons than the residents of other nations).[16] Thus, not only can responsibility for the US settlement payments not be fully attributed to actions by non-US operators, but the spread of such traffic routing practices and alternative services, and the relationship between calling patterns and other socio-economic indicia, demonstrate why further study and reform must take place at the multilateral level, and not on a route-by-route basis.

Finally, a unilateral approach to accounting rate reform may further distort traffic flows if non-US carriers are under compulsion to lower their accounting rates on the US route without concurrently making comparable adjustments on routes for which refile through the US would be a viable substitute. Thus, yet more traffic may be routed through the US, possibly even increasing the US settlement outpayments.

B. Reasons for a Multilateral Approach

In addition to the many reasons which argue against a unilateral approach, there are several reasons to favor multilateralism in reforming the accounting rate system.

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[15] NPRM at n.10 & ¶ 13. It should also be recalled that the above mentioned services and routing practices generate revenue for US carriers which should be taken into account.

[16] NPRM at ¶ 8 ("The U.S. outpayment results in part from the fact that U.S. consumers make more telephone calls to foreign countries than foreign consumers make to the United States.") Also, as the Commission has previously noted, AT&T has attributed the fact that US outbound traffic exceeds inbound traffic to four factors: "1) generally lower US collection rates; 2) the stimulating effects of growth in the US economy; 3) the relatively high per capital income in the US, coupled with its large population; and 4) the central role the telephone plays in social and business dealings." 1989 Order at 332. Furthermore, the fact that the US has a large immigrant population also contributes to the imbalance of traffic flows. US immigrants tend to be financially more well off than their relatives back home and therefore more calls may originate in the US.

First, many non-US carriers, such as FT, share the US carriers' concern about high accounting rates. The above mentioned factors, which affect traffic flows to and from the US, are not unique to the US. Many countries are or will be affected by similar factors.

Second, many governments other than the US government share the Commission's goal of lowering telephone costs for their citizens. For example, when the French government proposed a sweeping telecommunications reform bill, which was adopted in 1996, it justified the initiative by highlighting the expected positive impact of reform on consumers and on the economy through lower prices.[17] Furthermore, the past and recently renewed interest shown in accounting rate reform within the ITU indicates that the US is not alone in its concern on this issue.

Third, work on accounting rate reform has been underway at the ITU for some time as exemplified by the adoption of ITU Recommendation D.140 in 1992, calling for cost-oriented, nondiscriminatory and transparent accounting rates.[18] Further study on ITU Recommendation D.140 was completed in 1995, which resulted in guidelines for deriving cost-oriented accounting rates, including what cost elements to take into account.[19] The need to have cost-oriented accounting rates, as stated in ITU Recommendation D.140, was recently discussed in the ITU Telecommunication Standardization Sector Study Group 3's meeting in November 1996. During this meeting, the ITU appears to have reached an important turning point in recognizing the need for a multilateral agreement on a framework to help carriers to establish cost-oriented accounting

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[17] See September 23, 1996 FT Reply Comments on the Progress Report on Liberalization Developments in France and Germany ("Progress Report") filed by Sprint with the Commission on July 31, 1996, in the context of the Sprint Corporation proceeding, Sprint Corporation, 11 FCC Rcd. 1850, at 1872 (1996) ("Sprint Order").

[18] ITU Rec. D.140. As noted in the NPRM, work is also underway on accounting rate reform at the OECD. NPRM at ¶ 15; see also footnote 7 supra.

[19] ITU Rec. D.140, Annex A, "Guidelines for the cost elements for determining international telephone accounting rates", (Geneva 1995). FT notes that the Commission's International Bureau employs the cost elements listed by the ITU in their study which is used for the NPRM. See "Foreign Tariffed Component Prices", A Report Prepared by the International Bureau, Telecommunications Division, Federal; Communications Commission, December 1996 ("Bureau Report") at 1-2.

rates in the new telecommunications environment.[20] Assuming such suggestion is followed by Study Group 3, the Commission's methodology could become a contribution, for comment and review within the ITU process. It is noteworthy that the Secretary General of the ITU stated in his contribution on accounting rate reform submitted to Study Group 3 that he "understand[s] the urgency of reform and [is] convinced that a competitive market regime offers the best way forward for the majority of countries...[and that he is] not committed to the survival of the accounting regime *per se*, but would rather see it function more efficiently while alternative options are developed."[21] The Study Group will be holding its second meeting in May of 1997 and comments must be submitted by mid-March, so a relatively rapid timetable has been established at the ITU.

Finally, as noted above, a unilateral approach may be resisted by some players as mercantilist and self-serving for the US, while a multilateral approach to the same problem would be considered a more constructive initiative favoring global economic development.

II. COMMENTS ON THE PROPOSED CALCULATION METHODOLOGY

FT has reservations on the Commission's methodology for calculating the upper and lower ends of the benchmarks. In addition, the Commission's proposal to establish benchmarks based on the use of a single currency should be revisited.

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[20] As discussed in footnote 7 supra, the ITU Study Group 3 met in November 1996 and was given nine questions to study related to tariff and accounting principles. Question 2 requires the group to try to arrive at more accurate cost components and cost orientated accounting rates. See Study Group 3 Questions at 4.

[21] See ITU-Telecommunication Standardization Sector, Study Group 3 - Contribution 2, "Secretary General's Paper on Accounting Rate Reform", November 1996 ("ITU S-G Contribution") at 8-9. The Chairman of Study Group 3 submitted the ITU S-G Contribution as a contribution to be used as a basic reference document in the context of the Study Group 3 study. Id. at 1.

A. <u>The Calculation of the Upper End of the Benchmarks</u>

The calculation of the Tariffed Components Price (TCP) is the central element in the Commission's proposed determination of the upper end of the benchmarks. For each country, the TCP is comprised of three segments: (i) International Transmission, (ii) International Switching, and (iii) National Extension. In FT's opinion, the NPRM may underestimate the cost of the International Transmission and National Extension components.

The Commission proposes to base the cost attributable to the International Transmission facility component on the price of a private line, with a further assumption that carriers derive about four voice grade circuits from each 64 Kbps half channel for IMTS.[22] Although the Commission claims that some US companies use the multiplication factor of four (4), that number is too high, and ignores multiple routing. In FT's experience, the multiplication factor may be significantly lower. The proposed average multiplication factor of four (4) is not common for a major international operator that has a physically diverse network, on many routes, which has been developed over a period of years. Consequently, the NPRM may significantly overestimate the number of minutes transmitted on average per facility by an established operator. Accordingly, the Commission underestimates the cost that should be attributed to the International Transmission facility component of the benchmark.

With respect to the NPRM's estimate of the National Extension component for the benchmark, which is purportedly based on public tariffs for domestic service in the foreign destination countries, it should be noted that not all public tariffs are necessarily above-cost. Local calls in certain countries may be provided at prices below cost in order to ensure universal access by all segments of the population to telecommunications service. For example, local calls in Hong Kong and Kuwait are free of charge, though obviously some cost is associated with the provision of such calls.[23] In fact, in some countries, the below-cost local call element of the

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[22] NPRM at ¶37 & nn. 47-48; Bureau Report at 7-8 & n.11.

[23] NPRM at ¶37 & n. 52; Bureau Report at 12-14.

National Extension component may be offset by above-cost domestic long distance tariffs factored into the National Extension component. Thus, in cases where a large proportion of the international calls are directly terminated locally in metropolitan areas (without domestic long distance transport),[24] the National Extension component may indeed be below, not reflect, actual costs.

Finally, as the Commission recognizes, the NPRM's proposed methodology could encourage some countries to retain high domestic tariffs in order to justify a high benchmark.[25] Such action would have the unfortunate consequence of depriving the residents of such countries of lower domestic telecommunications costs and the ensuing economic benefits.

B. The Calculation of the Lower End of the Benchmarks

The NPRM proposes to set the lower end of the benchmarks at the level of incremental cost.[26] More precisely, the Commission reaffirms that its longer-term objective is to achieve settlement rates based on long run incremental costs.[27] This method, Total Service Long Run Incremental Cost, with its variations (Total Element Long Run Incremental Cost), is not unanimously accepted,[28] and not even in the US, as demonstrated by the reactions to the Commission's domestic service Interconnection Order.[29]

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[24] One difficulty FT encountered in reviewing the NPRM's National Extension component is the lack of detailed information on traffic volumes by geographic locations within each country.

[25] NPRM at ¶ 46.

[26] Id. at ¶ 50. See also id. at ¶¶ 31-32 & n.37 for the Commission's description of TSLRIC (Total Service Long Run Incremental Cost).

[27] Id. at ¶ 41.

[28] However, France is leaning towards implementing an interconnection regime based on long run average incremental costs.

[29] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Service Providers, CC Docket 96-98 and CC Docket 95-185, First Report and Order, FCC 96-325 (rel.

The NPRM acknowledges that the Commission does not have sufficient data at this time to calculate a precise estimate of incremental costs.[30] The Commission therefore uses information provided by AT&T[31] as an estimate of its "average network costs" for termination of inbound international calls. Obviously, the experience of AT&T, operating in the world's largest competitive market, can hardly be compared to the situation of any other country's operators. Assuming, as FT does, that the AT&T data, standing alone, is not adequate for an incremental cost computation for every country, FT notes that it is unrealistic to expect to be able to collect reliable data, on information which is frequently considered confidential, worldwide, on incremental costs.

More broadly, the utility of a benchmark range, with both an upper and a lower benchmark, as opposed to a single benchmark, is questionable. It may be more realistic and productive for multilateral discussions to simply result in an accepted framework for calculating costs to further assist carriers to establish, through their bilateral negotiations, cost-oriented accounting rates.

C. The Use of a Single Currency for Establishing Benchmarks Should be Revisited

The estimation of the costs and the expression of the benchmarks rely on a given currency, that of the current US Dollar,[32] and thus may not be accurate because they fail to take

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Aug. 8, 1996) ("Interconnection Order"). Numerous parties filed petitions for review of the Interconnection Order challenging fundamental aspects of the order, in particular the Commission's ability to set national standards for the pricing of wholesale tariffs and unbundled network elements. These petitions were consolidated for consideration in the Eighth Circuit. Following a temporary stay, the court granted a permanent stay of the operation and effect of the Interconnection Order's pricing provisions and "pick and choose" rules pending a final determination of the issues raised in the petitions. See Iowa Utilities Board, et al. v. FCC, No. 96-3321, 1996 WL 589204 (8th Cir. Oct. 15, 1996).

[30] NPRM at ¶ 50.

[31] Id. at ¶ 51 & n. 57.

into account currency fluctuations. In particular, FT notes that determining the benchmarks on the basis of a cost component that is converted into a dollar equivalent as of the date the benchmark is established is likely to inaccurately reflect the true costs over time of that element of the TCP in relation to the benchmark. Consequently, the Commission should not proceed to establish benchmarks without further consideration of another relevant economic unit designed to neutralize the effects of currency fluctuations.

III. PROBLEMS RAISED BY THE PROPOSED DEADLINES FOR APPLICATION OF THE BENCHMARKS AND OTHER ISSUES OF CONCERN TO DEVELOPING AND OTHER COUNTRIES

The Commission intends to require conformity with its benchmarks according to a pre-established schedule with different grace periods depending on the level of economic development of the correspondent country. For the least economically developed countries, which the NPRM defines as having a GNP per capita of $726 or less,[33] the NPRM provides for a four-year transition period during which the country must lower its accounting rate to fall within the benchmark range; two-year and one-year transition periods are proposed for "middle" income ($726-$8,955 GNP per capita) and "high" income ($8,956 or more GNP per capita) countries, respectively.[34] FT is concerned that an overly rapid schedule for rebalancing of tariffs, modification of investment plans, reduction of costs, acceleration of the liberalization process, etc. may cause real economic distortions for certain countries. Thus, some flexibility should be retained to allow longer transition periods where reasonably necessary.[35]

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[32] Bureau Report at 8.

[33] NPRM at ¶ 44.

[34] Id. at ¶¶ 62-63.

[35] Id. at ¶ 67, ¶ 87.

A related issue concerns the NPRM's preference for grouping countries by a few categories of economic development, as opposed to setting country-specific benchmarks.[36] FT remarks that categorizing countries by GNP as the sole criterion[37] may be inappropriate because such approach fails to take into consideration other elements, such as purchasing power parity or the level of development of a country's telecommunications sector.

IV. THE QUESTION OF COMPATIBILITY OF THE ENFORCEMENT MEASURES WITH THE PRINCIPLES OF THE GATS AND THE RULES OF THE WTO

The enforcement measures proposed in the NPRM and the related discussion suggest that the Commission might go as far as to order the partial or total suspension of settlement payments by US carriers to their counterparts.[38] The proposal of such draconian measures will surely increase resistance to a unilateral approach and are likely to have a chilling effect on multilateral discussions of accounting rate reform. Thus, FT respectfully suggests that the Commission refrain from adopting unilateral enforcement measures and market entry conditions at this point in time.

Today, FT would prefer to see a multilateral approach based on education and reasoned persuasion. Countries with relatively high accounting rates risk by-pass, and being relegated to lower levels of economic development, particularly if their neighbors adopt a more consumer-friendly telecommunications regime.[39] Telecommunications reform is more likely to take root successfully if it emerges from economic imperatives understood by the reforming country, than if

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[36] Id. at ¶ 39.

[37] Id. at ¶¶ 43-44.

[38] Id. at ¶ 89-90 & n.84.

[39] "Telecom infrastructure is among the top three 'critical factors' for successful global expansion" recently noted Chairman Reed E. Hundt. See "To build one world, only connect", Speech of Federal Communications Commission Chairman Reed E. Hundt before the Asia Society, Hong Kong, October 11, 1996.

adopted through coercion. By way of example, the French telecommunications sector is undergoing dramatic reform whereby it will shortly accomplish in a period of a few years what has taken the US decades to achieve. While FT cannot speak for the French government, the record shows that such reform initiative is grounded in the French government's recognition that reform would benefit the economy of France and its citizens[40] and is not the result of foreign mandate.

FT is concerned that the Commission claims the right to use the benchmarks to condition the entry by non-US carriers into the US market.[41] The Commission raises the valid question of whether the NPRM's proposed "safeguards" would be consistent with the United States' MFN obligations in the event the WTO's Group on Basic Telecommunications reaches an agreement on liberalizing trade in basic telecommunications service.[42] FT agrees that this is an open question and that the NPRM's proposed enforcement and market entry provisions may conflict with the principles of free trade. At a minimum, such provisions accentuate the unilateral tone of the approach of the Commission.

At this point in time FT believes that it would be counterproductive to second guess how this issue would ultimately be decided in the event of an actual challenge to such provisions. In this regard, FT respectfully requests that, in the event the NPRM proposals are adopted, the Commission express its support for the GATS and make clear that any dispute challenging MFN compatibility of the NPRM proposals should be submitted to the exclusive jurisdiction of the dispute resolution body established by the WTO.

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[40] See Impact Analysis, a study prepared by the French government and included in Sprint's Progress Report to the Commission on July 31, 1996. On September 11, 1996, Sprint filed a translation of the Impact Analysis with the Commission.

[41] NPRM at ¶76, ¶ 81 (for conditions on various types of authorizations to provide US international services, and conditions on authorizations for resale of international private line services to provide switched services, respectively).

[42] NPRM at ¶ 86.

CONCLUSION

FT agrees with the need for accounting rate reform. However, for the reasons set forth above, FT respectfully requests that the Commission abstain from adopting a unilateral approach to accounting rate reform. Instead, FT hopes that the Commission will support the reform initiative underway at the ITU which has recently gained new momentum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Danielle K. Aguto, hereby certify that on this 7th day of February 1997, a true copy of the foregoing Comments of France Telecom was hand-delivered to the persons indicated on the attached service list.

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